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11 UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF WASHINGTON
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14 UNITED STATES OF AMERICA,)
15) 4:15-CR-6049-EFS-16
16 Plaintiff,)
17 vs.) UNITED STATES'
18) CONSOLIDATED RESPONSE TO
19) DEFENDANT'S MOTION TO
20 EDGAR OMAR HERRERA FARIAS,) SUPPRESS AND MOTION IN
21) LIMINE TO EXCLUDE EVIDENCE
22 Defendant.)
23

24 Plaintiff, United States of America, by and through, Joseph H. Harrington,
25 United States Attorney for the Eastern District of Washington, and Stephanie Van
26 Marter and Caitlin Baunsgard, Assistant United States Attorneys for the Eastern
27 District of Washington, submits the following response to the Defendant's Motion to
28 Suppress and Motion to Exclude Evidence (ECF. 894 and 896).

The Defendant has untimely moved to suppress evidence in this case.
Specifically, the Defendant seeks to suppress his "seizure" stemming from a traffic

UNITED STATES' CONSOLIDATED RESPONSE TO DEFENDANT'S MOTION
TO SUPPRESS AND MOTION IN LIMINE TO EXCLUDE EVIDENCE- 1

1 stop on September 6, 2013, noting the reason for the traffic stop is unclear. ECF. 896.
2 Additionally, the Defendant is seeking to suppress evidence of a K9 sniff / alert
3 conducted on a white Ford Ranger in an apartment complex parking lot on the same
4 date. ECF. 894. The Defendant is also seeking to exclude photographs taken by law
5 enforcement officers during a period of surveillance on that date at a motel. ECF.
6 894. The United States respectfully submits this consolidated response to the
7 Defendant's motions as the issues presented are interrelated.
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10 Upon receipt of the Defendant's untimely motion, the United States began its
11 due diligence in attempting to locate witnesses, documents, etc. to respond to the
12 Defendant's motions. This has proven very difficult for the United States and the
13 investigating agents given the competing need and demands of preparing for this
14 witness-and exhibit-intensive approximate three-week trial. Further, the witnesses are
15 out of this District, some have retired, and others are on scheduled vacations. The
16 United States has done its best to respond and apologizes to the Court for any
17 perceived shortcomings by the United States.
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21 **A. FACTS OF SEIZURE OF METHAMPHETAMINE AND A FIREARM**
22 **FROM SKAGIT COUNTY IN SEPTEMBER 2013.**

23 According to police reports generated, Skagit County Interlocal Drug Unit Det.
24 Richardson was contacted by Drug Enforcement Administration ("DEA") Special
25 Agent Wheeler, who advised the DEA had reason to believe there was a white Ford
26 Ranger at a local hotel containing drugs. *See* Exhibit "A", Skagit County Reports of
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28 UNITED STATES' CONSOLIDATED RESPONSE TO DEFENDANT'S MOTION
TO SUPPRESS AND MOTION IN LIMINE TO EXCLUDE EVIDENCE- 2

1 Incident at p. 3. Det. Richardson and several other members of the drug task force
2 located a white Ford Ranger, registered to Rosa Granados, at the Days Inn in the
3 Mount Vernon, Washington area, and established surveillance. *See* Exhibit “A” at p.
4
5 3. While they were surveilling the Ford Ranger, a tow truck arrived, put the Ranger
6 on the flatbed of the tow truck, and drove it away. *See id.* The tow truck was
7 followed to an apartment complex in Sedro Woolley, Washington, where the Ranger
8 was removed from the tow truck. *See id.* Law enforcement continued surveillance on
9 the Ranger. *See id.*

11 Meanwhile, surveillance was continued at the Days Inn. *See id.* Surveillance
12 units observed two Hispanic males exiting the Days Inn and looking around the
13 parking lot, as if they were looking for a misplaced vehicle. *See id.* at p. 7. One of the
14 males made a phone call on his cell phone. *See id.* at p. 7. After the phone call was
15 made, a maroon Cadillac arrived. *See id.* at p. 3. The driver of the Cadillac exited the
16 vehicle, spoke with the two Hispanic males who had exited the Days Inn, and then
17 made a call on his cell phone. *See id.* The three males then returned to the Cadillac.
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19 *See id.* A short time later, a black BMW arrived just as the maroon Cadillac with
20 three occupants was leaving the parking lot, and met with the occupants of the maroon
21 Cadillac. *See id.* at p. 4. The Cadillac then left the parking lot. *Id.* After the vehicle
22 left the parking lot, Sgt. Meyer initiated a traffic stop of the vehicle. *See id.* at p. 9.

26 Initially, Sgt. Meyer was requested to perform a *Terry* stop on the vehicle per the
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1 Skagit County Detectives; however, Sgt. Meyer ultimately observed a traffic
2 violation, namely a window tint violation. *See id.* at p. 9. Sgt. Meyer then initiated a
3 traffic stop of the maroon Cadillac. *See id.* at 9. The driver was identified as Estevan
4 Villalobos and was advised the reason for the stop was for a tint violation. *Id.* He had
5 a suspended driver's license¹. *See id.* at p. 5. A K9 sniff occurred on the vehicle, and
6 alerted. *Id.* at p. 5. One of the two Hispanic male passengers was identified as the
7 Defendant. *See id.* at p. 5. A search of the vehicle resulted in no items of evidentiary
8 value. *See id.* at p. 5.
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11 Meanwhile, a K9 sniff was conducted on the white Ford Ranger, with a positive
12 alert. A search of that vehicle resulted in the location and seizure of what appeared to
13 be methamphetamine and a handgun. *See id.* at p. 5.
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15 **B. PHOTOGRAPHS FROM SKAGIT COUNTY**
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17 The Defendant seeks to exclude photographs taken by law enforcement officers
18 during their surveillance operation and the subsequent search of the Ford Ranger.
19 ECF. 894. In support of his request, the Defendant states the photos were not
20 provided within the timeline in the Court's Case Management Order, are not relevant,
21 and would confuse the jury. ECF. 894. The United States agrees the photographs
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25 ¹ The United States submits at that point, law enforcement would have identified the
26 passengers in an attempt to see if anyone would be able to drive the vehicle away from
27 the scene vs. it being impounded. Hence, the Defendant would likely still have been
28 identified as an occupant of that vehicle.

1 were not provided to the Defendant until September 13, 2018, which is the date the
2 United States received them from Skagit County. The United States respectfully
3 submits such disclosure date does not warrant the exclusion of the photographs.
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5 The photographs are very relevant to this case and would be greatly beneficial
6 to the jury in understanding the timeline of the Defendant's involvement in this case.
7 This is especially true now that the Defendant has advised his intent is to explain to
8 the jury that he was in Mexico during the time-period alleged in the conspiracy and
9 his proposed "alibi" instruction. A photograph of him in the United States would
10 certainly be relevant for the jury's consideration. Additionally, it is anticipated that
11 multiple cooperating defendants will testify about the white Ranger, its connection to
12 this Defendant, and the location of the methamphetamine and firearm in a secret
13 compartment in the vehicle. These law enforcement observations and photographs
14 would corroborate these multiple cooperating defendant statements.
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18 The Defendant also asserts the photographs of the methamphetamine and
19 firearm should be also excluded because the methamphetamine was not tested. ECF.
20 894. The Defendant does not cite to any authority to support his proposition.
21 Additionally, it is anticipated multiple cooperating defendants will testify as to their
22 independent understanding that there was methamphetamine contained in the trap in
23 the white Ranger. The United States respectfully submits such a challenge is not a
24 basis to exclude a photograph of the substance and the firearm.
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1 **C. K9 SNIFF RECORDS & EVIDENCE**

2 At the outset, it should be noted that the United States does not intend to rely on
3 K9 sniff alert results at trial. Upon the Defendant's request, the United States
4 provided the Defendant with all available records for the K9 and handler that Skagit
5 County in their files, which includes all the certifications for the K9 / Handler team,
6 on September 25, 2018, which is the date received by the United States. The United
7 States has been advised that the K9 and Handler has retired, and the Lt. for the police
8 department is currently still looking through all their old retained records in an attempt
9 to locate any additional K9 materials responsive to the defense request.
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12 **D. UNITED STATES' INTENT TO OFFER EVIDENCE AT TRIAL.**

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14 Given the time constraints and the pending trial, and despite the fact the reports
15 (Exhibit "A") lay out a basis for the traffic stop, the United States does not feel
16 comfortable proceeding to an evidentiary hearing on the issue of the legality of the
17 traffic stop. The United States instead intends to introduce this evidence as follows.
18 The United States will call surveillance officers from the Skagit County Interlocal
19 Drug Task Force to testify about their observations during the surveillance and
20 discussing the photographs they took during that surveillance. They will end their
21 testimony as to this portion of the events with the red Cadillac driving away from the
22 parking lot. A law enforcement officer will also testify about the search of the white
23 Ranger, and the discovery of a substance consistent with methamphetamine and a
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1 firearm. Multiple cooperating defendants will identify the Defendant in the
2 photographs taken by Skagit County Detectives during the surveillance. These
3 multiple cooperating defendants will also testify about their independent knowledge of
4 the Defendant's presence in the Mount Vernon area associated with this event, his use
5 of the white Ford Ranger as well as the presence of a secret compartment in the
6 Ranger for the purpose of transporting controlled substances.
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9 DATED this 3rd day of October 2018.

10 Joseph H. Harrington
11 United States Attorney

12 s/ Caitlin Baunsgard
13 Caitlin Baunsgard
14 Assistant United States Attorney

15 s/ Stephanie Van Marter
16 Stephanie Van Marter
17 Assistant United States Attorney

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19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on October 3, 2018, I electronically filed the foregoing with
21 the Clerk of the Court using the CM/ECF system which will send notification of such
22 filing to the following:
23

24 Peter S. Schweda, pschweda@wsmlawattorneys.com
25

26 s/ Caitlin Baunsgard
27 Caitlin Baunsgard
28 Assistant United States Attorney